DATUK HARRIS MOHD. SALLEH

v.

ABDUL JALIL AHMAD & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. P 156 OF 1981]
25 AUGUST 1983

TORT: *Defamation - Libellous publication on Chief Minister - First defendant, author and publisher - Second defendant, printer - Damages - Assessment of.*

The plaintiff, the Chief Minister of Sabah, was granted judgement in default of appearance on 4 December 1981, against the first defendant and interlocutory judgment against the second defendant on 2 April 1982, when the latter's statement of defence was struck out. The present proceedings were confined to the assessment of damages.

The plaintiff claimed that the first defendant had written and published libellous articles in a book titled *Tumbangnya Harris Salleh* and the second defendant had printed 10,000 copies of the said book. The first defendant could not be found and the second defendant applied for a separate assessment.

Held:

[1] The conduct of the plaintiff is important as to whether the plaintiff has provoked the libel or retaliated by libelling the defendants in reply.

[2] The higher the position of the plaintiff, the heavier the damages since such persons were more vulnerable to public opinion and criticism.

[3] The more enormous, outrageous, scandalous or scurrilous the defamation, the greater should be the damages.

[4] The mode and extent of publication: the wider the publication, the wider will be the extent of the repercussions.

[5] The willingness of the defendant to tender a retraction or an apology is a mitigating factor although such retraction can never be guaranteed to completely undo the harm or hurt caused.

[6] The whole conduct of the defendant from the time the libel was published down to the very moment of the verdict. The defendants had acted deliberately and recklessly not caring for the truth nor the distress and harm it would cause. The plaintiff should be awarded RM100,000 as compensatory damages together with costs to be taxed.

[Compensatory damages awarded with costs to be taxed.]

Cases referred to:
Broome v. Cassell and Co. Ltd. [1972] AC 1027
Datuk Patinggi Abdul Rahman Yaakob v. Abang Mohamad bin Abang Anding [1979] 2 MLJ 185
J.B. Jeyaretnam v. Lee Kuan Yew [1979] 2 MLJ 282
Morgan v. Odham Press [1971] 1 WLR 1239

Legislation referred to:
Defamation Ordinance 1957, ss. 7, 18

Other sources referred to:
Gatley on *Libel and Slander*, Gatley 7th Edn. at para. 1358

For the plaintiff - C. Abraham
For the 1st - defendant absent
For the 2nd defendant - H.Y. Lee

JUDGMENT

Siti Norma Yaakob J:

This action arose from the publication of libellous articles appearing in a book titled "Tumbangnya Harris Salleh". The plaintiff is the Chief Minister, President of the Berjaya Party and leader of the Barisan Nasional in the State of Sabah. The first defendant is the author and publisher of the book whilst the second defendant is its printer.

The writ of summons was issued on 6 April 1981. The first defendant failed to enter appearance and judgment in default was entered against him on 4 December 1981. In fact throughout the proceedings of this case, all papers were served on him by way of posting and through newspaper advertisements as he could not be found. The second defendant on the other hand, filed a statement of defence on 15 October 1981, but this statement of defence was struck out on 2 April 1982 and interlocutory judgment entered against him. The present proceedings before me were therefore confined to the assessment of damages but no oral evidence was led as the plaintiff had obtained an order of Court dated 20 January 1983, to adduce evidence by way of affidavit.

At the outset of the hearing, the second defendant applied for a separate assessment from the first defendant on the grounds that when he was requested by the first defendant to print the book, he was never instructed as to its contents and as such he did not have the necessary malice when he printed the book. To negative malice the second defendant must show that he had exercised all reasonable care in the printing of the book. In this case he admitted having any knowledge of the contents of the book and he relied on the words of the first defendant who stated that the book relates to the politics in Sabah. As his business was bad then, he never questioned the first defendant and went ahead to print 10,000 copies within 2 days. Under the circumstances, it would appear that in a desire to get his business going, he had been recklessly careless in printing the book and had not exercised all reasonable care that is expected of a printer and he cannot now take advantage of s. 18 of the Defamation Ordinance 1957. In fact the title of the book itself "Tumbangnya Harris Salleh" (the Downfall of Harris Salleh), the photograph of the plaintiff on the cover showing him sipping what I can only guess looks like beer and the author's unusual pen name should have aroused his suspicions that this was no ordinary book. Moreover, he had pleaded unintentional defamation and an offer of amends in his statement of defence and it is this same statement of defence which has been struck out as disclosing no defence whatsoever. That being the case, s. 18 is not available to the second defendant and I accordingly dismissed his preliminary objection.

The defamatory articles complained of relate to the plaintiff's conduct in acquiring the site of the building of Berjaya Headquarters by exchanging prime timber land to the owner of the site. By this exchange, the plaintiff is alleged to have acquired 50% share of the building whilst the other 50% is held by another member of his family. He is also alleged to have received gifts amounting to RM3.4 million on his 50th birthday and at the party celebrating his birthday, his wife was also presented with a necklace worth RM1.5 million. The last article relates to the plaintiff's unislamic attitude of choosing a Friday, the Muslim holy day, to declare open a Chinese temple, an action quite unbefitting of a Muslim leader.

The principles governing the assessment of damages in actions of this nature are clearly spelt out by Gatley on *Libel and Slander*, 7th Edn. at para. 1358. The assessment does not depend on any legal rule but the following factors should be considered: (1) The conduct of the plaintiff (2) his position and standing (3) the nature of the libel (4) the mode and extent of publication (5) the absence or refusal of any retraction or apology and (6) the whole conduct of the defendant from the time the libel was published down to the very moment of the verdict.

From these principles, it is clear that the task of assessing damages is to approach it broadly, the amount of damages to be awarded will depend on the circumstances of each case. In *Broome v. Cassell and Co. Ltd.* [1972] AC 1027 Lord Hailsham gave the following guidelines.

> Quite obviously the award must include factors for injury to the feelings, to the anxiety and uncertainty undergone in the litigation, the absence of apology or the reaffirmation of the truth of the matters complained of or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel or where perhaps he has libelled the defendant in reply.

Bearing these principles in mind, I shall now consider one by one the various factors that have been listed above.

(1) Conduct of plaintiff

Following *Broome v. Cassell and Co. Ltd. supra,* I have to consider whether the plaintiff has provoked the libel or retaliated by libelling the defendants in reply. There is no indication that there has been any bad conduct on the part of the plaintiff and neither is there any evidence to suggest or imply so.

(2) The plaintiff's position and standing

Two cases involving well known political leaders in this region were cited to show just how far their positions can influence the Court when assessing damages. The first is the case of *Datuk Patinggi Abdul Rahman Yaakob v. Abang Mohamad bin Abang Anding* [1979] 2 MLJ 185 where it was held that the higher the plaintiff's position, the heavier the damages. This is so as "such persons are more vulnerable to defamation in so far as they are more well known, often hold public positions of considerable responsibility and trust and come into wider contact with more people and may have a wider circle of friends". In *Datuk Patinggi's* case, the plaintiff, the Chief Minister of Sarawak then was awarded RM25,000 as compensatory damages for 2 libels published in letters sent to the Prime Minister of Malaysia and the Yang DiPertua, Dewan Undangan Negeri Sarawak. In the other case of *J.B. Jeyaretnam v. Lee Kuan Yew* [1979] 2 MLJ 282, the Singapore Court of Appeal confirmed an award of $130,000 made to the Prime Minister of Singapore pertaining to slanderous remarks uttered by the leader of an opposition party at an election rally.

The plaintiff in this case was and still is Chief Minister of Sabah, President of the Berjaya Party which is a component of Barisan Nasional. His position as a leader and a political figure requires that he enjoys an impeccable reputation but at the same time he is most vulnerable to public opinion and criticism. I have been urged to consider awarding a sum in the region of RM150,000 - RM200,000 following the trend of the Singapore case above. But here I need to draw a distinction in the status of the persons defamed. In the Singapore case, the person slandered is Mr. Lee Kuan Yew, the Prime Minister of an independent country whose standing both at home and abroad is already well established, whereas the plaintiff in the case before me is the Chief Minister of a state which makes up the Federation

that is Malaysia and to that extent, his area of authority is somewhat limited. Moreover the political situation in both regions can never be the same and in this respect I am not able to learn of the situation then prevailing in Sabah as the plaintiff did not come forward to be examined on that aspect of his evidence.

(3) The nature of the libel

Following *Datuk Patinggi's* case, the more enormous, outrageous, scandalous or scurrilous the defamation, the greater should be the damages. In the case, the plaintiff is depicted as being corrupt and had abused his position as Chief Minister and President of the Berjaya Party to further his own financial interests and those of other members of his family. He is also pictured as a leader wanting in honesty and integrity and as such is unfit to hold the public offices of the Chief Minister and that of the Berjaya Party, and as a Muslim leader, he should be condemned as he has no respect to the teachings of Islam.

Undoubtedly, the articles amount to a very grave libel to the plaintiff's political reputation, a cause of great annoyance and anxiety to him and if believed, would cause irreparable harm to his political career.

(4) Mode and extent of publication

In *Morgan v. Odham Press* [1971] 1 WLR, 1239 the House of Lords held that the wider the extent of the publication, the heavier the damages will be. In this case, 10,000 copies of the book containing the libellous articles were printed and distributed throughout Sabah. They were printed in 1981, just before the 1982 General Election and timing of the publication can only mean that the publication was intended to influence the people of Sabah in their choice of the plaintiff as their leader of the state. However, the publication did not appear to have affected the plaintiff's position as he was returned to power with a majority of over 5,000 votes. My attention was also drawn to the extent of the publication of the libels in *Datuk Patinggi's* case where the circulation was limited to the 2 persons to whom letters containing the libels were addressed to, and to the Singapore case where the slanderous words were uttered in the presence of 1,500 people. I do appreciate that the extent of the publication of the libels before me is wider since the plaintiff has not been able to recall the 10,000 copies that have been circulated and there is no knowing also whether the books have left the State in which case the extent of the repercussions are subsequently wider.

(5) The absence or refusal of retraction or apology

A mitigating factor to be considered is the willingness of the defendants to tender a retraction or an apology, but even such retraction can never be guaranteed to completely undo the harm or hurt caused. See *Datuk Patinggi's* case. With reference to the first defendant, he had at no time attempted any retraction or apology. On the contrary, he has sought to escape liability by making himself scarce. The second defendant on the other hand did make what I would call some halfhearted attempts at an offer of an apology. In August 1981, he attempted to see the plaintiff with an offer of amends. However, all he was able to do was to narrate the circumstances leading to him printing the book to the plaintiff's Counsel but as this was not done in compliance with s. 7 of the Defamation Ordinance 1957, I do not consider this as much of a mitigating factor. Then again he wrote personally to the plaintiff seeking an apology but this was done only after the interlocutory judgment has been entered against him. Lastly in Open Court,

his Counsel submitted that he was still prepared to apologise and also prepared to contribute RM3,000 to an Educational Fund which the plaintiff intends to launch to receive awards made in respect of future claims of this nature. However remorseful the second defendant appears to be, I consider that such attempts at an apology coming at this late stage of the proceedings cannot work towards lessening his liability to damages.

(6) The whole conduct of the defendant from the time the libel was published down to the very moment of the verdict.

The defendant's motive in publishing the libel just before the general election can only be motivated by malice, and the libels were perpetrated for political and financial gains. They had taken advantage of the situation by depicting the plaintiff in the worst possible light. They acted deliberately and recklessly not caring for the truth nor the distress it would cause and the harm that would be inflicted on the personal and political reputation of the plaintiff. Taking all the above factors into consideration, I award the plaintiff a sum of RM100,000 as compensatory damages together with costs to be taxed.

Also found at [1983] 2 CLJ 211